

the respective tax-increase dates does not exceed 30,000.

(c) *Credit against tax.* Each person shall be allowed as a credit against the floor stocks tax imposed by paragraph (a) of this section an amount equal to \$60, or the amount of floor stocks tax for which such person is liable, whichever is less. Controlled groups are eligible for one credit amount for the entire group. Dealers who are component members of a controlled group must apportion the \$60 credit among the members of the group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 296.197 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

(d) *Vending machines.* The floor stocks tax shall not be imposed on cigarettes held by any person in any vending machine on the first moment of each respective tax-increase date. Cigarettes owned by vending machine operators on the first moment of each respective tax-increase date and held in transit or in storage facilities on those dates and not in the vending machines are not exempt from floor stocks tax. Vending machine operators are subject to the inventory requirements of § 296.198 and the tax return filing requirements of § 296.197 of this part if they hold any cigarettes outside of vending machines on the first moment of each respective tax-increase date.

(e) *Treatment of cigarettes in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provisions of law, cigarettes which are held in a foreign trade zone on the first moment of January 1, 1991, or the first moment of January 1, 1993, shall be subject to floor stocks tax and shall be treated for purposes of this subpart as held on such date for sale if

(1) Internal Revenue taxes have been determined, or Customs duties liquidated, with respect to such cigarettes before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or

(2) Such cigarettes are held on such date under the supervision of a Customs

officer pursuant to the second proviso of section 3(a) of such Act.

(f) *Cigarettes held in bond.* The floor stocks tax does not apply to cigarettes held in ATF or customs bond on the first moment of each respective tax-increase date.

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§ 296.195 Rate of tax.

(a) *Small ("Class A") cigarettes.* The rate of floor stocks tax applicable to small cigarettes held for sale on the respective tax-increase dates of January 1, 1991, and January 1, 1993, is \$2 per thousand. The term "small cigarettes" means cigarettes weighing not more than 3 pounds per thousand, and includes the usual king, 100 mm, and 120 mm sizes of cigarettes.

(b) *Large ("Class B") cigarettes.* The rate of floor stocks tax applicable to large cigarettes held for sale on the respective tax-increase dates of January 1, 1991, and January 1, 1993, is \$4.20 per thousand; except that for large cigarettes more than 6½ inches long, the rate is the same as for small cigarettes, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette. The term "large cigarettes" means cigarettes weighing more than 3 pounds per thousand, and includes the unusually large cigarettes such as those sometimes referred to as the "Banquet" size.

§ 296.196 Payment of tax.

(a) *General.* The floor stocks tax is payable by every person who holds for sale, on the first moment of the respective tax increase dates of January 1, 1991, and January 1, 1993, federally tax-paid or tax determined cigarettes, except those vending machine stocks exempt under § 296.194(d) and stocks held by persons who have less than 30,000 cigarettes in inventory on a tax increase date. Except as provided in paragraph (b) of this section, the tax shall be paid on or before June 30, 1991, for cigarettes held on January 1, 1991, and on or before June 30, 1993, for cigarettes held on January 1, 1993, and shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Bureau of Alcohol, Tobacco and Firearms, and shall show the

taxpayer's name and employer identification number.

(b) *Payment by Electronic Fund Transfer (EFT).* Persons who pay excise tax by electronic fund transfer shall use the same method for the payment of floor stocks tax.

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§ 296.197 Return.

(a) *General.* Each person who holds for sale, at the first moment of the respective tax-increase dates of January 1, 1991, and January 1, 1993, Federally taxpaid or tax determined cigarettes, shall file a return for the cigarettes so held. The return shall be made on ATF Form 5000.28, Floor Stocks Tax Return, in accordance with the instructions on the form. The returns shall be filed no later than June 30, 1991 (with respect to the tax increase date of January 1, 1991), and June 30, 1993 (with respect to the tax-increase date of January 1, 1993), at the address indicated on the form. The provisions of 26 U.S.C. 5703(b)(2)(D) concerning the special rule where a return due date falls on a Saturday, Sunday or holiday, and of 27 CFR 70.305 concerning timely mailing apply to floor stocks tax.

(b) *Multiple locations.* Where cigarettes subject to floor stocks tax are held at more than one location or place of business, the taxpayer shall file either a consolidated return (if all locations have the same employer identification number) or a separate return for each place of business. In either case, the taxpayer shall make and retain a list, showing the address of each place of business where the taxpayer held cigarettes subject to floor stocks tax, the name of the proprietor of each such place of business (if different from the taxpayer), the employer identification number (if different from the taxpayer's), and the number and tax category of cigarettes so held at each such place. Cigarettes which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused cigarettes will be offered for sale. If cigarettes held in a warehouse are offered for sale at several locations, the cigarettes so held shall either be reported on the tax return filed by any

one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations.

(c) *Controlled groups.* A separate return must be filed by each member of a controlled group who has an individual employer identification number. The credit discussed in § 296.194(c) of this part may be apportioned among the members of the controlled group and reported on the various returns. A list showing the names, addresses, and employer identification numbers of all members of a controlled group shall be retained by each member who files a separate return.

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§ 296.198 Inventory.

(a) *General.* The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a complete physical inventory, except as provided in paragraph (b) of this section. The inventory shall be the basis for establishing the quantity of all large and small cigarettes subject to floor stocks tax held as of the first moment of the respective tax-increase dates of January 1, 1991, and January 1, 1993. Cigarettes in transit on the first moment of January 1, 1991, and on the first moment of January 1, 1993, shall be included in the inventory of the person (either consignor or consignee) who is the legal owner of the articles at that moment.

(b) *Source record inventory.* In lieu of a physical inventory, a book or record inventory may be used if supported by source records which indicate the receipt and disposition of all cigarettes subject to floor stocks tax, and reflect the actual quantity of such cigarettes on hand as if a physical inventory had been taken as of the first moment of the respective tax-increase dates. The proprietor's records must include (1) the name and address of the consignor and consignee, (2) the date of receipt or disposition, (3) brand name, (4) class of cigarettes, and length of large cigarettes, if more than 6½ inches in length, and (5) the quantity of cigarettes involved.

(c) *Record of inventory.* The inventory shall be recorded in writing as it is